IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.371 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE H.B. ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

STATE OF GUJARAT - Appellant

Versus

RATILAL MANJIBHAI KACHHI PATEL - Respondent

==========

Appearance :
MR ND GOHIL, APP for Appellant.
MR MC BAROT for Respondent.
==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 27/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973, (“the Code” for short) is directed against judgment dated February 27, 1997

rendered by the learned Additional Sessions Judge, Banaskantha at Palanpur, in Special Case No.124 of 1996 by which the respondent is acquitted of the offences punishable under Sections 20(a) and 20(b)(i) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (“the Act” for short).

2. The facts emerging from the record of the case are as under:

On April 24, 1996, Mr.I.B.Vyas was discharging duties as Police Inspector, L.C.B., Palanpur. At about 12.00 noon, District Superintendent of Police summoned him and Police Sub Inspector Mr.P.J.Chaudhary. The D.S.P., Banaskantha, informed Mr.Vyas that he had received a secret information indicating that in Umiya farm situated at Iqbalgadh, Taluka Palanpur, the respondent was cultivating *ganja* and selling the same. D.S.P. instructed Mr.Vyas and Mr.Chaudhary to arrange a raid and do the needful in the matter. At about 12.30 noon, Mr.Vyas with other police officials reached Iqbalgadh Railway Gate and summoned two persons, i.e. Subhashchandra Dharamchandra Agrawal and Navabhai Kalabhai Vachhiya, who were to act as panch-witnesses. As the two persons summoned, expressed their willingness to

act as panch-witnesses, they were conveyed the information received and first part of the panchnama was drawn. Thereafter, the members of the raiding party proceeded further and reached the farm-house. Mr.Vyas found that a person was sitting on a cot kept under a tree. On interrogation, he disclosed his name to be Ratilal Manjibhai Kachhi Patel (the respondent). Mr.Vyas introduced himself to the respondent and after conveying the information received, expressed his desire to search the field of the respondent. Before effecting search of the field of the respondent, Mr.Vyas offered to effect search in presence of a gazetted officer or a magistrate, but the said offer was declined by the respondent. Thereupon, the field belonging to the respondent was searched. The search resulted into find of green *ganja* plants as well as a heap of cultivated dry plants of *ganja.* Mr.Vyas demanded pass or permit from the respondent authorizing him to cultivate *ganja,* but none could be produced by the respondent. Mr.Vyas thereupon asked Head Constable Hajaribhai to summon a person to weigh the offending substance found from the *wadi* belonging to the respondent. Accordingly, Head Constable Hajaribhai summoned Mohan Gamnajibhai to weigh the offending substance. The offending substance was weighed and it was found that the weight of green *ganja* plants

was 40 Kilograms whereas the weight of dry *ganja* plants was 5 Kilograms. Necessary samples for analysis were drawn and sealed as required by law. Mr.Vyas completed drawing of second part of panchnama at the *wadi* of the respondent himself. He reduced into writing his complaint and presented his complaint with the respondent, panchnama, *muddamal,* etc. before the Officer in charge of Amirgadh Police Station. On the basis of the complaint of Mr.Vyas, offences punishable under the Act were registered against the respondent. After registration of the offences, complaint lodged by Mr.Vyas was handed over to him for further investigation. The *muddamal* was sent to Forensic Science Laboratory for analysis through Writer Head Constable Mr.Mafatbhai Virabhai. Mr.Vyas also recorded statements of those persons who were found to be conversant with the facts of the case. The report of the analysis indicated that the substance analysed was *ganja* within the meaning of the Act. On completion of investigation, the respondent was chargesheeted in the Court of learned Special Judge, Banaskantha at Palanpur, for commission of offences punishable under the Act on the basis of which, Special Case No.124 of 1996 was registered.

3. The learned Additional Sessions Judge,

Banaskantha at Palanpur, to whom the case was made over for trial, framed necessary charge against the respondent at Exh.5. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined; (1) Mohanbhai Gamnaji Mali as P.W.-1 at Exh.9; (2) panch Subhashchandra Dharamchandra as P.W.-2 at Exh.12; (3) Navabhai Kalabhai Adiwasi as P.W.-3 at Exh.20; (4) Talati-cum-Mantri Mr.Laxmichand Purshottambhai Kotadiya as P.W.-4 at Exh.21; (5) Head Constable Hajaribhai Motibhai as P.W.-5 at Exh.28; (6) PSI Mr.Parthibhai Jethabhai as P.W.-6 at Exh.29; (7) First Grade *Jamadar* Mr.Puransing Modsing as P.W.-7 at Exh.30; (8) Writer Head Constable Mafatlal Virabhai as P.W.-8 at Exh.34; (9) Swaroopbhai Khusalram as P.W.-9 at Exh.37; and, (10) Investigating Officer Mr.I.B.Vyas as P.W.-10 at Exh. 41, to prove its case against the respondent. The prosecution also produced documentary evidence such as certificate issued by Mohanbhai indicating that *ganja* found from *wadi* of the respondent was weighed by him at Exh.10; panchnama of search of *wadi* of the respondent and seizure of *ganja* therefrom at Exh.13; Village Form No.8/A indicating that Survey No.13 of Village Iqbalgadh, Taluka Palanpur, was in name of the respondent at Exh.23; extract of Form No.7 + 12 relating to Survey No.14 indicating that the same

was cultivated by the respondent at Exh.24; Village Form No.7+12 showing that the respondent was cultivating Survey No.13 at Exh.25; map of relevant Survey Nos. of Village Iqbalgadh at Exh.26; report by PI to PSO of Amirgadh Police Station while handing over complaint, panchnama, *muddamal,* etc. at Exh.31; document executed by PI Mr.Vyas indicating that the information received was reduced into writing at Exh.42; grounds of arrest communicated to the respondent at Exh.43; complaint of Mr.Vyas at Exh.44; report indicating compliance of Section 47 of the Act at Exh.46; report of analysis at Exh.47, etc. in support of its case against the respondent.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code. In his further statement, the respondent admitted that Survey Nos.13 and 14 of Village Iqbalgadh were running in his name and that a farm house was also situated in Survey No.13. Except this, defence of the respondent was that of total denial. No defence evidence was led by him.

5. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that the respondent was owner and in possession of Survey Nos.13 and 14 situated at Village Iqbalgadh. The learned Judge further deduced that it was proved by the prosecution that the respondent cultivated *ganja* and that *ganja* plants were seized on April 24, 1996. The learned Judge noticed that the respondent was not authorized to cultivate *ganja.* However, the learned Judge found that mandatory provisions of Section 42 of the Act were not complied with, which was fatal to the prosecution. In view of abovereferredto conclusions, the learned Judge has acquitted the respondent by judgment dated February 27, 1997 giving rise to instant appeal.

6. This Court has heard Mr.N.D.Gohil, learned Additional Public Prosecutor for the State, and Mr.M.C.Barot, learned counsel of the respondent, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

7. The case of the prosecution is that the secret information was received by the D.S.P., Palanpur, which, in turn, was conveyed to PI Mr.Vyas and PSI Mr.Chaudhary on the basis of which *wadi* belonging to the respondent was raided and cultivation of *ganja* was found. However, it is an admitted position that D.S.P., Palanpur, is not examined by the prosecution in this case. PI Mr.Vyas has stated in his testimony that he was not knowing whether the information, which was received by D.S.P., Palanpur, was reduced into writing by the D.S.P. or forwarded by him to his immediate official superior. There is no manner of doubt that the D.S.P., Palanpur, is a gazetted officer and will have to be treated as an empowered officer within the meaning of sub-section (2) of Section 41 of the Act in view of Notification No.GH-L. 14-NDS-1087 (i) M. dated 15th June 1985 issued by the State Government under Section 41(2) of the Act. It may be stated that the above-quoted notification was published in Gujarat Government Gazette Extraordinary, Part IV-B, dated June 15, 1987. Section 41(2) of the Act requires that when an officer of a gazetted rank, who is empowered, has reason to believe from his personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug or psychotropic substance in respect of which any offence

punishable under Chapter IV has been committed or any document or other article which may furnish, evidence of the commission of such offence has been kept or concealed in any building, conveyance or place, he may authorize any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest such person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place. The D.S.P., Palanpur, was obliged to take down in writing the information which was received by him and thereafter, could have authorized PI Mr.Vyas and PSI Mr.Chaudhary to search the place belonging to the respondent and do the needful in the matter. The record does not indicate that the information received was reduced by the D.S.P., Palanpur, into writing. Thus, there is no manner of doubt that there is breach of provisions of Section 41 sub-section (2) of the Act. The provisions made in the Act requiring officers to reduce into writing the information received by them, are mandatory because they serve their own purpose. Breach of this obligation would render search and seizure doubtful. Under the circumstances, though this Court does not agree with the finding recorded by the learned Judge of the trial Court that provisions of Section 42 of the Act were not complied with, this Court is of the opinion that no ground is made out by the learned counsel of the

appellant to interfere with well-founded acquittal of the respondent inasmuch as there is breach of provisions of Section 41, subsection (2) of the Act which makes search of *wadi* belonging to the respondent and seizure of *ganja* therefrom doubtful. Therefore, the appeal, which lacks merits, deserves dismissal.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the judgment impugned in the appeal.

[J.M.PANCHAL,J.]

[H.B.ANTANI,J.]

Rajendra